At common law a binding agreement between the holder and the maker of a note for an extension of time discharged the indorsers. *Siebeneck* v. *Anchor Savings Bank*, 111 Pa. St. 187, 2 Atl. 485. The basis of the rule was that the rights of the indorsers were prejudiced, in that they could not by payment of the note acquire the right to proceed immediately against the maker. For they were subrogated to the rights of, and so subject to the same defenses as, the holder. But this reason does not apply when the agreement is between the holder and a third party; hence the indorsers were not discharged. *Wright* v. *Independence Nat. Bank*, 96 Va. 728, 32 S. E. 459. See 2 DANIELS, NEGOTIABLE INSTRUMENTS, 5 ed., § 1324. Probably, the provision of the Negotiable Instruments Law was intended to enact the common-law rule; for there seems to be no more reason for the discharge of the indorsers where the agreement is with a third party than where there is merely delay by the holder in bringing an action against the maker. Where there is reasonable basis for doubt, a statute, whose language purports to change the common law, should be strictly construed; and especially is this true where the statute is part of a uniform law, in general declaratory of the common law. 2 LEWIS' SUTHERLAND STATUTORY CONSTRUCTION, 2 ed., 860 *et seq.* But here the words of the statute seem too plain to be construed as enacting the common-law rule. The principal case seems to limit the express words of the statute.

CARRIERS — BILLS OF LADING — LIABILITY OF CONSIGNOR FOR FREIGHT. — A railroad carried fruit consigned to a purchaser who contracted with the vendor to pay freight. Title passed to the purchaser on shipment. The railroad issued its bill of lading in the usual form providing for delivery to consignee, he paying freight. The carrier delivered the goods, through error collecting from the consignee only part of the freight due. It sought further payment from the consignee; but it never sued him, although he was solvent. The railroad now sues the shipper for the balance due. *Held*, that it may not recover. *Yazov & M. V. R. Co.* v. *Zemurray*, 238 Fed. 789 (C. C. A., 5th Circ.).

In general, the consignor, under a contract of shipment, is liable for the freight, irrespective of an attempt by the carrier to collect from the consignee. *Shepard* v. *De Barnales*, 13 East 565; *Wooster* v. *Tarr*, 90 Mass. 270; *Grant* v. *Wood*, 21 N. J. L. 292; *Gilson* v. *Madden*, 1 Lans. (N. Y.) 172; *Collins* v. *Union Transportation Co.*, 10 Watts (Pa.) 384; *Spencer* v. *White*, 23 N. C. 236; ABBOTT, SHIPPING, 683. Most of these cases proceed on the ground that the consignor is the true owner and so ultimately liable. See *Grant* v. *Wood*, *supra*; *Spencer* v. *White*, *supra*; *Barker* v. *Havens*, 17 Johns. (N. Y.) 234, 237. But *cf. Wooster* v. *Tarr*, *supra*. Normally the owner is ultimately liable. But he is not necessarily so. Ultimate liability must depend on the agreement between the consignor and consignee. Whether the carrier may hold the consignor for freight should depend upon the agreement between the consignor and the carrier. This often involves the question whether the usual clause in the bill of lading, "consignee paying freight," is intended to benefit the consignor or not. See *Spencer* v. *White*, *supra*, 238. The intent must be gathered from all the circumstances; and where the consignee is known to be ultimately liable, the construction should be like that in the principal case, that the utmost effort be made to collect from the consignee before the consignor can be held. See *Barker* v. *Havens*, *supra*. This result is commendable in that it casts the burden on the right party in the first instance without circuity of action, and secures protection to consignor and carrier alike. *Cf. Thomas* v. *Snyder*, 39 Pa. St. 317.

CHOSES IN ACTION — GIFT — PAROL EXTINGUISHMENT OF A DEBT. — The deceased had advanced money to the defendant who executed and delivered to him a promissory note. Before his death deceased refused to accept payment and told defendant to keep the money for himself. The executrix now

seeks to enforce the claim. *Held*, that she may recover. *Sullivan* v. *Shea*, 162 Pac. 925 (Cal.)

In most jurisdictions a creditor may extinguish his claim, without consideration, only by a release under seal, or in the case of a specialty by the surrender or destruction of the instrument itself. *Weber* v. *Couch*, 134 Mass. 26. Even under the somewhat anomalous New York rule a written, though gratuitous, receipt for payment is the only other alternative. *Gray* v. *Barton*, 55 N. Y. 68. Accordingly, the court in the principal case held that there had been no extinguishment. A declaration of trust of a *chose* in action in favor of a stranger is, however, binding, though oral and without consideration. *Ex parte Pye*, 18 Ves. Jr. 140. No reason suggests itself why the trust may not as readily be declared in favor of the obligor of the *chose*. The claim would then be virtually extinguished since the *cestui*-obligor would be protected in order to prevent circuity of action. But in the principal case the deceased's intention was to extinguish an obligation; not to create a trust. Formerly courts were inclined to treat an imperfect gift of a chattel as a perfect declaration of trust. *Morgan* v. *Malleson*, L. R. 10 Eq. 475. To do so imposes a duty upon the donor which he never intended to assume. Modern decisions have abandoned the doctrine. *Richards* v. *Delbridge*, L. R. 18 Eq. 11. However in the case of land an imperfect conveyance will be supported whenever possible as a bargain and sale, or covenant to stand seised. *Roe* v. *Tranmer*, 2 Wils. 75. For by virtue of the Statute of Uses the final result is precisely the one intended. A case like the principal case, where there is a gift of a *chose* to an obligor, occupies an intermediary position. *Cf. Flower* v. *Marten*, 2 Myl. & C. 459. By distorting the intended extinguishment into a trust no additional burden would in fact be imposed upon the deceased's estate. Yet the result would differ from, however closely it might resemble, that which deceased had attempted to effect. It is submitted, therefore, that the somewhat anomalous rule of *Ex parte Pye* need not, and consequently should not, be extended to upset a long-settled doctrine of the common law; and that the principal case is sound.

CONFLICT OF LAWS — JURISDICTION OF COURTS: PERSONAL JURISDICTION — SERVICE: SERVICE BY PUBLICATION AS A DENIAL OF DUE PROCESS. — The defendant was domiciled in Texas, but had left the state, not intending to return. A judgment on a note was rendered in Texas against him after service by publication. He seeks to have the judgment reversed for want of due process of law. *Held*, that the judgment is reversed. *McDonald* v. *Mabee*, U. S. Sup. Ct., Oct. Term, 1916, No. 135.

A state cannot in general extend the effect of its process outside its borders so as to acquire jurisdiction. *Ralston's Appeal*, 93 Pa. St. 133. Thus, service by publication does not give jurisdiction for a personal judgment against a non-resident. *Pennoyer* v. *Neff*, 95 U. S. 714; *Rand* v. *Hanson*, 154 Mass. 87, 28 N. E. 6. But service by publication will give a state court jurisdiction of a person domiciled within the state. *Becquet* v. *MacCarthy*, 2 B. & Ad. 951; *Henderson* v. *Staniford*, 105 Mass. 504. Due process of law, however, requires not merely jurisdiction of the defendant but reasonable notice to him. *Roller* v. *Holly*, 176 U. S. 398. Service by publication of a resident of a state who is not within the state has been considered sufficient. *Henderson* v. *Staniford*, *supra; Fernandez* v. *Casey*, 77 Tex. 452, 14 S. W. 149. And apparently in these cases it was not considered material whether or not the defendant intended to return to the state. But where there is no such intention to return, the chances are that publication will not actually notify the defendant. Consequently the rule of the principal case that such publication is not reasonable notice seems justifiable.

CORPORATIONS — CORPORATIONS *DE FACTO* — CHARTER AMENDMENT EFFECTED AFTER ATTEMPT AT UNAUTHORIZED CONSOLIDATION. — An insurance